

Message

From: Mumford, Fred [Fred.Mumford@dep.nj.gov]
Sent: 1/22/2021 10:21:05 PM
To: Oconnell, Kimberly [OConnell.Kim@epa.gov]
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Thanks Kim.

Getting back more active with work these days. I did participate in an August internal call when DEP was putting together its position. Need to check my notes from that one. And hope these changes offered by EPA get this settlement moving.

Thanks,
Fred

From: Oconnell, Kimberly <OConnell.Kim@epa.gov>
Sent: Friday, January 22, 2021 3:21 PM
To: Mumford, Fred <Fred.Mumford@dep.nj.gov>
Subject: [EXTERNAL] FW: Syncon Resins Superfund Site: EPA Settlement Proposal

Hi Fred

I hope you are well. I am just sending you the attached FYI, as I see you were not copied. Ed was working with Dave Haymes and Lou Karagias on these negotiations for a little over a year now – so I thought I would send it to you, in case you are going to be working on this. Talk to you Monday.

Kim

From: Gervacio, Danielle
Sent: Friday, January 22, 2021 1:46 PM
To: Haymes, David <David.Haymes@dep.nj.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>
Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>
Subject: Syncon Resins Superfund Site: EPA Settlement Proposal

Greetings,

My name is Danielle Gervacio and I will be permanently assuming the role of EPA's Community Involvement Coordinator (CIC) for the Syncon Resins Superfund site in the place of my predecessor, Shereen Kandil. I look forward to working with the Town of Kearny and DEP. Below you will find EPA's response regarding settlement of this matter.

The parties have devoted considerable time and effort into this negotiation process. It is evident from this process that the parties and, in particular, EPA and the DEP, have notably different views and legal positions. While we respectfully disagree on a number of issues, there is one issue that we can all agree on: we share a common interest in resolving this complex legal matter and having the site redeveloped and reused. An expeditious resolution is preferable, most importantly for the DEP who has a significant interest in seeing a new owner assume the cost of performing the O&M for the OU1 remedy under DEP oversight.

EPA has conducted an in-depth review of the legal and equitable arguments presented in the DEP's submittal of 9/14/20 and has given consideration to the Town's position as set forth in the Town's email of 10/8/20. While EPA continues to disagree with the State's position, we recognize the need to end these negotiations. So in an effort to finally bring this matter to conclusion, EPA has agreed to make a number of significant concessions on the following disputed issues:

- Second Tier of Recovery: On 2/5/20 and 2/11/20, the Town submitted a settlement proposal that divided the distribution of potential sales proceeds into three tiers of recovery. The second tier was developed to address what the Town and EPA perceive to be an inequity that resulted from DEP's recovery of insurance proceeds in the State's litigation. In addition, the Town accepted a 15% allocation contingent on the potential of realizing a greater recovery in the settlement if the sale proceeds were to exceed \$18M. EPA agreed to the concept of the second tier of recovery because it viewed the DEP's recovery as inconsistent and contrary to the spirit of the EPA consent decree with Benjamin Farber and the cooperative agreement entered into between EPA and the DEP. The DEP does not agree with this view. It is apparent that the parties have reached an impasse on this issue. In order to move forward, EPA is willing to make a significant concession and forgo collecting any proceeds from a second tier of recovery. Given the significant compromise and resulting benefit to the DEP of omitting the second tier of recovery, and taking into consideration the Town's position regarding its allocation contingency, EPA is willing to increase the Town's allocation by 2% to 17% in the first tier. EPA, thus, agrees to reduce its own allocation by 2%.
- DEP's Past Costs and Future O&M: There continues to be disagreement on the amount of DEP's past costs secured by liens on the Site. As with the discussion of the Second Tier of Recovery above, the parties have reached an impasse on this issue as well. While each party believes it has compelling legal and equitable arguments supporting its views, we must respectfully acknowledge and accept our continued disagreement and find a path forward. EPA acknowledges that the DEP has made a concession regarding the issue of recovery of future actual O&M costs upfront and that DEP contends future actual O&M costs should be considered in the same category as EPA's past costs for purposes of the allocation. In order to help resolve this issue, EPA is willing to offer a further compromise and increase the DEP's allocation by 1% to 13% in the first tier. EPA, thus, agrees to reduce its own allocation by an additional 1%. This compromise is in addition to the benefit that DEP will realize from the compromise omitting the second tier of recovery.
- Settlement Proposal: Under EPA's settlement proposal outlined above, the third tier as discussed in prior settlement correspondence will now become the second tier. Therefore, EPA's settlement proposal with regard to the first \$18M in net proceeds is: 70% to EPA, 17% to the Town of Kearny, and 13% to the DEP. This represents a decrease from EPA's initial allocation of 82% to 70%, a significant compromise. Because EPA has decreased its allocation for the first \$18M in proceeds by a total of 3% as set forth above, in the less likely event that proceeds recovered are greater than \$18M, EPA believes that it is fair and equitable that EPA receive a slightly higher percentage. Therefore, EPA proposes that the proceeds above \$18M be distributed: 55% to EPA, 22.5% to the Town of Kearny and 22.5% to the DEP. EPA notes that under this new second tier, if net proceeds exceed \$18M, the DEP will recover a much higher percentage than it had previously proposed.
- Technical discussion regarding OU1 O&M: The DEP's submittal included a lengthy response to technical issues that have been raised prior to and during the course of these negotiations. EPA believes that it is more efficient to address these technical issues through separate discussions between EPA and DEP without the involvement of the Town or, to the extent practicable, agency attorneys. Certain technical issues may need to be memorialized in the MOA or are reserved to being addressed in the DEP's AOC with the future site owner.

We look forward to your response to this offer.

Kindly,
Danielle Gervacio

Danielle Gervacio

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